

COUNTY OF CONTRA COSTA  
POST RETIREMENT HEALTH BENEFITS PLAN

Effective January 1, 2008

## TABLE OF CONTENTS

		<b>Page</b>
SECTION 1:	ESTABLISHMENT AND PURPOSE OF THE PLAN .....	1
SECTION 2:	DEFINITIONS.....	1
SECTION 3:	BENEFITS .....	2
SECTION 4:	CONTRIBUTIONS .....	3
SECTION 5:	ADMINISTRATION.....	3
SECTION 6:	GENERAL PROVISIONS .....	6
SECTION 7:	MODIFICATION AND TERMINATION OF THE PLAN .....	7
SECTION 8:	EXECUTION OF PLAN DOCUMENT .....	9

**COUNTY OF CONTRA COSTA  
POST RETIREMENT HEALTH BENEFITS PLAN**

**Effective January 1, 2008**

**SECTION 1: ESTABLISHMENT AND PURPOSE OF THE PLAN**

The County of Contra Costa Post Retirement Health Benefits Plan (“Plan”) provides post retirement health benefits for certain retired Employees, and their Spouses and Dependents, of the County of Contra Costa and certain other Employers. The Plan does not establish any new benefits and does not create any new rights to benefits. The Plan may be modified, altered, or terminated at any time and for any reason as provided herein. Assets, if any, that are set aside to pay retiree health benefits may be held in trust; it is intended that the Trust which holds Plan assets be tax exempt.

**SECTION 2: DEFINITIONS**

Administrator means the Treasurer-Tax Collector of the County or his or her designated agent for administration of the Plan.

Board means the Board of Supervisors of the County.

CCCERA means the Contra Costa County Employees Retirement Association.

COBRA means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended from time to time, and all applicable rules and regulations issued thereunder.

Code means the Internal Revenue Code of 1986, as amended from time to time, and all applicable rules and regulations issued thereunder.

County means the County of Contra Costa.

Custodian means the Custodian under the Trust Agreement.

Dependent means a dependent as defined under section 152 of the Code.

Employee means an individual who, prior to retirement: is a member of CCCERA, is employed by an Employer, is on the regular payroll of the Employer, for whom the Employer withholds employment taxes, and for whom the Employer issues a timely IRS form W-2. Therefore, for example, a common-law employee for whom the Employer does not issue a form W-2 is not an Employee. An individual’s status as an Employee shall be determined by the appropriate Employer in its sole discretion.

Employer means the County and such other public agencies that participate in this Plan pursuant to a resolution or other action taken both by the governing body of the other agency and the Board.

Fiduciary means a person who (i) exercises any discretionary authority or discretionary control respecting management of the Plan or exercises any authority or control respecting management or disposition of its assets, (ii) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) has any discretionary authority or discretionary responsibility in

the administration of the Plan. A person is a Fiduciary only to the extent that he or she actually acts as described herein or has the duties described herein.

HIPAA means the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, and all applicable rules and regulations thereunder.

Plan means this County of Contra Costa Post Retirement Health Benefits Plan.

Plan Year means a 12 consecutive month period beginning on January 1 and ending on December 31 of the same calendar year.

Spouse means the person to whom an Eligible Retiree is legally married. A former husband or wife will not be eligible for benefits under the Plan, except as required by law such as COBRA.

Trust means the legal entity resulting from the Trust Agreement between the County and the Trustee.

Trust Agreement means the agreement entered into between the County and the Trustee pursuant to this Plan to receive, hold, invest, and disburse assets to pay benefits and reasonable administrative (including investment) expenses in accordance with the Plan and Trust Agreement.

Trustee means the Trustee as set out in the Trust Agreement.

### **SECTION 3: BENEFITS**

#### (a) Benefits

Health benefits shall be provided under this Plan only to Employees who have retired under CCCERA, and to their Spouses and Dependents only. Benefits shall only be provided under this Plan to individuals, at the time, in the form, and in the amount determined by the County in its sole discretion (or by the other Employers in their sole discretion, for their retired Employees, and their Spouses and Dependents).

#### (b) Incompetent Recipient

If, in the opinion of the Administrator, any individual becomes unable to properly handle the benefits payable under the Plan and, on advice of counsel, the Administrator does not determine that any person has been given a valid power of attorney or other legal instructions for dealing with such benefits, the Administrator may apply to a court of competent jurisdiction for instructions for distribution on such individual's behalf that the court determines will be beneficial to such individual, including, without limitation, distribution to such individual's guardian or conservator.

#### (c) Unclaimed Benefits

If the Administrator is unable to ascertain the whereabouts or identity of an individual who is entitled to benefits under this Plan, after having sent notification by registered mail to such person's last known address then the amount otherwise payable shall be forfeited and shall not ever be restored. Any such forfeitures will be retained in the Trust to provide benefits to other individuals under the Plan.

(d) HIPAA and COBRA Compliance

The Administrator shall comply with the requirements of HIPAA and COBRA and similar California statutes as required by law.

**SECTION 4: CONTRIBUTIONS**

(a) Discretion of Employer

Each Employer shall determine, in its sole discretion, the amount of contributions (if any) made to the Trust for any period and from time to time.

(b) Contributions to Trust

All contributions made under the Plan shall be deposited in accordance with the Trust Agreement to be held, invested, and disbursed in accordance with the terms of the Plan and Trust Agreement.

(c) Payment From Employer's Contributions

Benefits provided under this Plan for a retired Employee of an Employer and his or her Spouse or Dependent shall be paid from the assets contributed to the Trust by the Employee's Employer (including net investment earnings and less administrative expenses) and not from the assets contributed by any other Employer or the earnings thereon.

(d) Trust Agreement

(i) The County has entered into a Trust Agreement with the Trustee under which the Trustee will receive and invest contributions made under the Plan. The Trust Agreement provides for, among other things, the investment and reinvestment of the Trust assets and the income thereof, the management of the Trust assets, the responsibilities of the Trustee, removal of the Trustee and appointment of a successor, accounting by the Trustee and the disbursement of the Trust assets.

(ii) The Trust Agreement is incorporated by reference as a part of the Plan, and all persons who receive or claim benefits hereunder are subject to the terms of the Trust Agreement. If there is a conflict between the terms of the Plan and the Trust Agreement, the terms of the Plan shall control.

**SECTION 5: ADMINISTRATION**

(a) General

(i) Each Fiduciary shall discharge his or her duties solely in the interest of the individuals who receive benefits under this Plan and for the exclusive purpose of providing such benefits as are provided herein to such persons, defraying reasonable expenses of administering the Plan and minimizing Employer

contributions hereto. Each Fiduciary, in carrying out such duties and responsibilities, shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

- (ii) A Fiduciary may serve in more than one fiduciary capacity, may employ one or more persons to render advice with regard to his/her fiduciary responsibilities (with payment from the Trust), and may be reimbursed for reasonable expenses, or may be paid reasonable compensation, from the Trust.
- (iii) A Fiduciary may allocate and delegate any of his/her responsibilities for the operation and administration of the Plan to the extent consistent with his/her fiduciary duties. The Fiduciary shall promptly notify the Administrator (or if the Fiduciary is the Administrator, shall notify the County Chief Administrative Officer), in writing, of any such allocation or delegation.

(b) Employers

Each Employer shall supply such full and timely information for all matters relating to the Plan as the Administrator or the Trustee may reasonably require for the effective discharge of their respective duties.

(c) Administrator

- (i) The Administrator shall have plenary authority to administer the Plan. All determinations made by the Administrator under this Plan will be conclusive and binding upon all persons.
- (ii) The Administrator shall have the power to construe the Plan and to determine all questions that may arise thereunder, at his or her sole discretion, relating to the administration of the Plan.
- (iii) All disbursements by the Trustee shall be made upon, and in accordance with, the written directions of the Administrator who shall act in accordance with the written directions of each Employer with respect to providing benefits hereunder. However, the payment or reimbursement to the Trustee, an Employer or other person of reasonable expenses for the administration or investment of Trust assets may be made by the Trustee without such written direction by the Administrator.
- (iv) The Administrator shall establish rules and procedures to be followed by any individual who may apply for benefits under this Plan and for furnishing and verifying information necessary or appropriate for the payment of benefits under the Plan.
- (v) The Administrator may employ such counsel, accountants, and other agents as it shall deem reasonable. The reasonable compensation of such counsel, accountants, and other agents and any other expenses incurred by the

Administrator in the administration of the Plan and the Trust shall be paid from the Trust. The Administrator shall not be paid any compensation for administering this Plan in addition to his regular compensation from the County.

- (vi) If the Administrator is a County officer or employee, his/her duty under this Plan shall be treated as official duties and he/she shall be entitled to relief from liability, and defense and indemnification, to the same extent as provided for any government officer or employee in the conduct of his/her official duties.

Additionally, no Employer, the County, the Plan, the Trustee, the Administrator or any other person will be liable for the direct or indirect consequences of any delay or failure to pay any benefits under the Plan.

(d) Claims Procedures

All claims for benefits under the Plan shall be made, in writing, with the Administrator. Upon receipt, the Administrator shall review the claims and determine whether the claimant is entitled to receive any benefits pursuant to such claim. The Administrator shall notify the claimant in writing of any adverse decision with respect to his/her claim within 90 days after its submission, unless the Administrator notifies the claimant before that time that additional time is needed for a decision. The notice of any adverse decision shall be written in a manner calculated to be understood by the claimant and shall include the specific reason or reasons for the denial.

(e) Limitations on Actions

- (i) In the event of any dispute over benefits under this Plan, all remedies available to the disputing individual under the claims procedure described above must be exhausted before legal recourse of any type is sought including but not limited to filing a lawsuit in court.
- (ii) Any claim for benefits made in accordance with the claims procedure provided herein must be filed with the Administrator no later than 180 days after payment of the claimed benefit is due under the Plan of such claim shall be null and void.

Any legal recourse of any type that is sought after all remedies under the claims procedure provided herein have been exhausted must be filed no later than 180 days after such procedures have been exhausted.

(f) Records

- (i) All acts and determinations of the Administrator shall be duly recorded and all such records together with such other documents as may be necessary in exercising its duties under the Plan shall be preserved for no less than six years. Such records and documents shall at all reasonable times be open for inspection by the County and for the purpose of making copies by any person designated by the County.

- (ii) The Administrator shall provide such information (no less frequently than once every calendar quarter), resulting from the application of its responsibilities under the Plan, as is reasonably requested by the County.

## **SECTION 6: GENERAL PROVISIONS**

- (a) Governing Law

The Plan shall be construed, regulated and administered according to the laws of the State of California, and shall also be construed to the maximum extent possible in accordance with the Code in order for benefits provided by the Plan to be nontaxable and for the Trust to be tax exempt.

- (b) Construction

The headings and subheadings in the Plan have been inserted for convenience of reference only and shall not affect the construction of the provisions hereof. In any necessary construction the masculine shall include the feminine and the singular the plural, and vice versa.

- (c) Administration Expenses

The reasonable expenses of administering this Plan and the Trust and investing Trust assets shall be paid from the Trust.

- (d) Participant's Interests

No person shall have any right or interest in or to the Trust assets or benefits provided under the Plan other than as specifically provided herein.

- (e) Prohibition Against Assignment and Alienation of Benefits

To the maximum extent provided by law, no right or claim to, or interest in, any part of any payment from this Plan shall be subject to anticipation, alienation, sale, transfer, assignment, mortgage, pledge, garnishment, encumbrance, hypothecation, commutation, garnishment, charge, or any other process of any court. No benefit payable from this Plan to any person shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, except as required by law. Any attempt to anticipate, alienate, sell, transfer, assign, mortgage, pledge, garnish, encumber, charge, or levy against any benefit under this Plan shall be void, except as required by law. No portion of the benefits payable under this Plan shall be subject to the bankruptcy estate of any person.

(f) Provisions Applicable During Periods of Military Service

Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided as required by any law concerning veterans rights, including chapter 43 of title 38, United States Code.

(g) Providing Information

An individual who applies for or claims benefits under this Plan may be required to furnish such information as may be requested by the Administrator in the administration of the Plan. If the Administrator determines that an individual furnished erroneous information, the Administrator may make such adjustment in any benefit payable hereunder as he deems appropriate to correct such error.

(h) Correction of Errors

- (i) The Administrator may require an adjustment to be made in any Plan benefit or may collect previously paid benefits if, after payment has commenced, any error in any pertinent information or any mistake in payment is discovered.
- (ii) Any person in receipt of Plan benefits paid (or on whose behalf benefits were paid) but not owed has an obligation to immediately notify the Administrator of the overpayment and to return the overpaid benefits to the Plan.
- (iii) The Administrator may, on behalf of the Plan, take whatever action is necessary or appropriate to enforce the Plan's right to recover mistaken payments.
- (iv) The Trustee shall return to the County or other affected Employer any contributions that were made on account of a mistake in fact; any such return shall be made no later than one year after the contribution is received and no earnings on such contribution shall be returned. The Trustee shall determine whether a contribution was made on account of a mistake in fact

(i) Plan is Binding

Each person who receives or claims benefits under this Plan, shall be bound by the terms of this Plan and the Trust Agreement including all amendments to the Plan and the Trust Agreement and shall also be bound by decisions made by the appropriate Employer, Administrator and Trustee in accordance with the terms of the Plan or Trust Agreement.

**SECTION 7: MODIFICATION AND TERMINATION OF THE PLAN**

(a) Amendment of the Plan

The Board shall have the right at any time and for any reason, in its sole discretion, to modify, alter, or amend the Plan in whole or in part, in any manner and without limit, including reducing or eliminating the payment of any benefits under this Plan. Such modification, alteration or amendment may be made without providing any other benefits

in lieu thereof and for any persons (including but not limited to persons then receiving benefits under the Plan). This Plan does not provide or create any contractual or other obligation of the County or any other Employer to provide any benefit to any person.

- (i) Except as provided in the Plan or Trust Agreement, any modification, alteration or amendment to the Plan shall not shall have the effect of (1) reverting to the County any part of the principal or income of the Trust or (2) permitting any part of the principal or income of the Trust to be used for, or diverted to, purposes other than: the exclusive benefit of providing retiree health benefits to retired Employees and their Spouses and Dependents, defraying the reasonable expenses of administering the Plan or minimizing Employer contributions hereto. Also, any assets held in the Trust at the time of amendment shall continue to be held in the Trust and used to provide benefits in accordance with the Plan, pay reasonable expenses of administration and investment, and minimize Employer contributions to the Trust.
- (ii) In any event and without limitation of any type, the Board shall have the right to make any modifications, alterations or amendments necessary or appropriate to maintain the tax exempt status of the Trust.

(b) Termination of the Plan

- (i) The continuance of this Plan is not a contractual or other obligation of the County. The Board shall have the right at any time and for any reason, in its sole discretion, to terminate the Plan and immediately cease paying any benefits hereunder without providing any other benefits in lieu thereof. However, assets held in the Trust at the time of termination shall continue to be held in the Trust and used to provide health benefits in accordance with the Plan and pay reasonable expenses of administration.
- (ii) Upon termination of the Plan, the Trust shall continue until all assets have been distributed from the Trust. Assets may also be transferred to another trust to be held for the purposes provided under this Plan.
- (iii) If, after all benefits owed hereunder have been paid and all Plan and Trust expenses have been paid, there are assets remaining in the Trust, at the sole discretion of the Board, such remaining assets shall revert to the Employers in proportion to their contributions to the Trust for the prior 5 years, or be transferred to another entity that meets the requirements to be tax exempt under the Code, as determined by each Employer, in its discretion, with respect to Trust assets allocated to its account.

(c) Limitation of Obligations

No Employer, or any other person, shall have any liability or obligation to provide benefits hereunder on or after the termination of the Plan. Upon termination of the Plan, all persons who may claim an interest in any benefits shall look solely to the Trust assets for such benefits (if any).

**SECTION 8: EXECUTION OF PLAN DOCUMENT**

To record the adoption of the Plan as set forth herein, the County has caused its authorized representative to execute this document on this \_\_\_\_\_ day of \_\_\_\_\_, 2008 to be effective on January 1, 2008.

COUNTY OF CONTRA COSTA

By: \_\_\_\_\_

\_\_\_\_\_  
(Title)